

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2012AP1026
2012AP2111**

Cir. Ct. No. 2011CV1367

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

KEVIN SCHEUNEMANN,

PLAINTIFF-APPELLANT,

V.

GURSTEL CHARGO,

DEFENDANT-RESPONDENT.

APPEALS from orders of the circuit court for Washington County:
TODD K. MARTENS, Judge. *Affirmed in part; reversed in part and cause
remanded with directions.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. This case arises from Gurstel Chargo's attempts to collect an old credit card debt from Kevin Scheunemann. Scheunemann appeals

from a circuit court order granting summary judgment in favor of Gurstel. Gurstel, meanwhile, cross-appeals a circuit court order denying its motion for sanctions against Scheunemann.

¶2 We conclude that the circuit court properly granted summary judgment in favor of Gurstel. However, we also conclude that the circuit court erred in denying Gurstel's motion for sanctions against Scheunemann. Accordingly, we affirm in part, reverse in part, and remand the case to the circuit court for an award of sanctions against Scheunemann.

¶3 In 1997, Scheunemann obtained a credit card account with Bank of America (BOA). Scheunemann received statements on this account at his address in Kewaskum, Wisconsin. On January 22, 2007, Scheunemann made his last payment on the account.

¶4 On or around August 25, 2011, within Wisconsin's six-year statute of limitations, Gurstel sent Scheunemann a letter regarding the BOA account. The letter explained that Gurstel was retained to collect on the account and that the amount due, as of that date, was \$15,766.20. Scheunemann responded by filing the instant action.

¶5 In his complaint, Scheunemann alleged, among other things, that Gurstel was barred from collecting on the debt due to the contract's choice of law, statute of limitations and the application of the Wisconsin statute of repose. Scheunemann also alleged that Gurstel was violating a court order in Washington

County Case No. 2009CV603 by attempting to collect a debt that had been released.¹

¶6 At summary judgment, the circuit court quickly disposed of Scheunemann's claims and entered an order granting summary judgment in favor of Gurstel. Gurstel subsequently moved for sanctions on the ground that Scheunemann's action was frivolous.² The circuit court entered another order denying the request. This appeal and cross-appeal follows.

¶7 We review a grant of summary judgment using the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2011-12).³

¶8 We apply two different standards of review to allegations that an action is frivolous: "one for determining whether actions are *commenced* frivolously and a second for determining whether actions are *continued* frivolously." *Keller v. Patterson*, 2012 WI App 78, ¶21, 343 Wis. 2d 569, 819 N.W.2d 841.

¹ In that case, FIA Card Services sued Scheunemann regarding an unrelated MBNA America Bank, N.A., credit card account. The case was settled in 2010 and released Scheunemann from all claims pertaining to that account. However, the settlement agreement provided that, "Any claims, lawsuits, pending claims, disputes, or other allegations or assertions which are not expressly referenced herein are not hereby released, waived, discharged, or satisfied."

² Gurstel had earlier served Scheunemann with a notice of motion and motion for sanctions.

³ All references to the Wisconsin Statutes are to the 2011-12 version.

¶9 “[O]ur review of a circuit court’s decision that an action was *commenced* frivolously is deferential.” *Storms v. Action Wis., Inc.*, 2008 WI 56, ¶34, 309 Wis. 2d 704, 750 N.W.2d 739 (emphasis added). We uphold the circuit court’s decision unless there is no reasonable basis for it. *See Wester v. Bruggink*, 190 Wis. 2d 308, 317, 527 N.W.2d 373 (Ct. App. 1994).

¶10 Meanwhile, our review of whether an action was *continued* frivolously presents a mixed question of fact and law. *See Storms*, 309 Wis. 2d 704, ¶35. What the litigant knew or should have known is a question of fact. *Id.* Whether the circuit court’s determinations of fact support the conclusion that the action was continued frivolously is a question of law we review de novo. *Id.*

¶11 On appeal, Scheunemann presents two challenges to the circuit court’s grant of summary judgment. First, he contends that the circuit court erred by applying Wisconsin’s six-year statute of limitations instead of Delaware’s three-year statute of limitations, which would have extinguished Gurstel’s claim. Again, he bases this argument on the contract’s alleged choice of law and the application of the Wisconsin statute of repose. Second, he contends that the court erred because Gurstel did not prove its claim was not barred by the settlement agreement and subsequent court order in Washington County Case No. 2009CV603. We consider each argument in turn.

¶12 With respect to Scheunemann’s first argument, we agree with the circuit court that Wisconsin’s six-year statute of limitations applied. Here, it is undisputed that Scheunemann’s failure to pay his bill occurred in Wisconsin, rendering collection a domestic cause of action. Although Scheunemann attempts to muddy the waters by pointing to MBNA documents specifying that Delaware law applies, there are no facts to show that those documents are applicable to this

case and the BOA account. Likewise, Scheunemann's attempt to devise an elaborate theory about why Delaware law should apply is frivolous.⁴

¶13 With respect to Scheunemann's second argument, we agree with the circuit court that the settlement agreement and subsequent court order in Washington County Case No. 2009CV603 were not bars to the collection of the debt at issue. As noted above, the agreement and court order involved an unrelated MBNA account and clearly preserved the claim involving the BOA account. Consequently, the circuit court was correct in dismissing this argument as "nonsense."

¶14 Having addressed the arguments in Scheunemann's appeal, we turn next to Gurstel's cross-appeal. Gurstel contends that the circuit court erred in denying its motion for sanctions.

¶15 In denying Gurstel's motion for sanctions, the circuit court did not make significant findings of fact, only that Scheunemann was a relatively sophisticated pro se litigant. Its decision to deny was based on its legal conclusion that Gurstel did not meet its burden of demonstrating that Scheunemann knew or should have known that his action was without any basis.

¶16 Reviewing the facts and circumstances of this case, we conclude that there was no reasonable basis to deny Gurstel's motion for sanctions. Even as a pro se layperson, Scheunemann should have known, with the most cursory investigation, that the commencement and continuation of his action was

⁴ Scheunemann attempts to argue that the final significant event in his breach of contract was the acceleration of his debt by the nonbreaching party as opposed to his failure to pay his bill.

frivolous. *See, e.g., Verex Assurance, Inc. v. AABREC, Inc.*, 148 Wis. 2d 730, 736, 436 N.W.2d 876 (Ct. App. 1989) (holding pro se litigant responsible for adequate investigation of facts and law). Although we recognize that our decision to reverse on this issue will be a burden on the circuit court's time and energy, we feel compelled to do so given the nature of Scheunemann's claims.

¶17 For the reasons stated, we affirm in part, reverse in part, and remand the case to the circuit court for an award of sanctions against Scheunemann. On remand, the circuit court shall award to Gurstel all reasonable attorneys' fees attributable to this litigation, including this appeal.

By the Court.—Orders affirmed in part, reversed in part, and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

